



## PURCHASE ORDER

## CONDITIONS OF CONTRACT

### 1. Definitions

1.1 In these terms and conditions the following words have the following meanings unless the context requires otherwise.

“Affiliate” means any Corporate Entity in which Barratt from time to time has a material interest, including but not limited to an interest in not less than 33% of the ordinary share capital in a Company or an interest as a Member in a Limited Liability Partnership.

“Authorised Representative” means any person legally entitled to bind Barratt or an Affiliate whether pursuant to a Power of Attorney from Barratt or such Affiliate or otherwise a Director or Officer of either of the same as designated from time to time.

“Barratt” means BDW Trading Limited (including for the avoidance of doubt any names or styles under which BDW Trading Limited trades from to time) and including any Affiliate for the purposes of any Order placed by such Affiliate.

“Barratt Customer” means any customer or prospective customer of Barratt or any Affiliate who has or will be purchasing a Property or who is or has been contacted by Barratt in connection with a possible purchase by them of a Property.

“Barratt Representative” shall be the Barratt employee who raised the Order.

“Barratt Website” means the website at [www.barrattcommercialsupport.co.uk](http://www.barrattcommercialsupport.co.uk)

“Brief” means the brief for/or description of any Deliverable to be provided to the Supplier which is in the form of that set out or referred to in the Order.

“Business Day” means a day other than a Saturday or Sunday or public holiday in England when Banks in London are not open for business or any day which otherwise would constitute a Business Day in the period from 23rd December in any calendar year to 2nd January in the next following calendar year.

“Code of Conduct” means the Suppliers and Sub Contractor Works Code of Conduct as published by Barratt on the Barratt Website from time to time.

“Commencement Date” means the date set out in the Order.

“Conditions” means the terms and conditions set out herein as may be specifically amended by the Order.

“Confidential Information” means the Conditions and any details of payments made or Goods or Services or Deliverables supplied under the terms of any Contract and any and all information acquired by either party in respect of the other party’s business other than that which is in the public domain other than by breach by either party of this Agreement and any information which is generated from the other party’s Confidential Information including but not limited to any information contained within any document plan drawing or any other matter or thing over which a Party has Intellectual Property Rights, and any Personal Data as referred to in clause 15.

“Contract” a Contract between Barratt or an Affiliate and the Supplier for the supply of Goods and or Services made by an Order which shall incorporate these terms to the exclusion of all others.

“Contractor” means any Contractor for whom the Supplier is responsible where this is a term of an Order or any contractor appointed by Barratt and notified to the Supplier as the party who shall use the Goods.

“Customer Charter” means the Customer Charter for dealings with Barratt Customers published by Barratt on the Barratt Website from time to time insofar as the same applies to works carried out or Goods supplied by the Supplier under the terms of a Contract.

“Data Protection Laws” means (a) the General Data Protection Regulation (Regulation (EU) 2016/679) (the “GDPR”); and; (b) associated legislation including European Union Directives 95/46/EC and 2002/58/EC (as amended by Directive 2009/139/EC) and any legislation and/or regulation implementing or made pursuant to them including but not limited to the UK’s Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2013; and; (c) any applicable associated or supplementary data protection laws, regulations, codes of practice or guidance, as updated, amended or replaced from time to time;

“Deliverable” means all documents, materials and products in any form or media, including but not limited to any of the same in which Intellectual Property Rights can subsist either alone or otherwise developed by the Supplier, including but not limited to any drawings, plans, designs, pictures, computer programs, data, reports, specifications or diagrams, including any drafts.

“Development Site” means any site owned, controlled or operated by Barratt on its own behalf or others including but not limited to any Affiliate at which residential and/or other development is taking place.

“Distributor” means any third party with whom the Supplier contracts for the supply and delivery of Goods for use on or incorporation in a number of Development Sites by Barratt or other parties.

“Drawings” means any and all drawings, plans specifications or other similar materials as referred in the Order and provided by Barratt or an Affiliate to the Supplier or by the Supplier to Barratt for or in relation to the Goods or the Services in any form or media including any drafts of the same.

“Force Majeure” means as set out in clause 12.

“Goods” means the Goods specified in an Order which shall meet the requirements of the Specification.

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Order” means a Purchase Order for the supply of Goods and/or Services in connection therewith in the form used by Barratt from time to time.

“Packaging” means all Packaging, including but not limited to crates, cartons, boxes, pallets labels strapping, wrapping and containers of any description containing the Goods and/or otherwise bought to the Development Site by or on behalf of the Supplier.

“Parties” means Barratt and the Supplier being the parties to a Contract brought into being by an Order.

“Personal Data” means Personal Data as defined by the Data Protection Laws and shall include any Sensitive Personal Data as defined therein.

“Price” means the amount shown on the Order as the total or per unit price or rate as appropriate which is payable to the Supplier for the Goods or the Services which shall be in accordance with the Price List (if any).

“Price List” means the lower of the published price for or Price per unit shown in the Order for each or any of the Goods to be supplied by the Supplier under the terms of an Order and/or the price or rate for the supply for any Services provided by the Supplier under the terms of an Order.

“Products” means the Goods, Services or Deliverables to be supplied by the Supplier as set out in a Contract.

“Property” means any residential or commercial property constructed at any Development Site.

“Services” means any Services set out in the Specification in connection with the supply of the Goods by the Supplier or the provision of the Deliverable in accordance with the Brief.

“Sites” means those Sites set out in an Order upon which the Units are situated to which the Goods are to be supplied and/or which the Goods are to be fitted and/or the Services are to be supplied.

“Specification” means the Specification for the Goods and the Services (and each of them to the extent the same are set out in an Order) and which is in the form set out or referred to in an Order.

“Supplier” means the Party to a Contract other than Barratt as recorded in the Order which shall include and may be referred to as a Contractor in the terms of an Order and any other party for whom the Supplier is responsible under the Conditions, including but not limited to any agent, contractor, employee or servant of the Supplier involved in the provision of the Services, the Goods, the Deliverables or any of them.

“Suppliers Obligations” means those obligations on the part of the Supplier as set out in the Contract.

“Supplier Representative” means a duly authorised Representative of the Supplier as notified by the Supplier to Barratt from time to time and who is authorised by the Supplier to agree the terms of a Contract.

- 1.2 In the event of any conflict between the terms set out in any Order and the Conditions then the former shall take priority.
- 1.3 Any reference in any Contract to a clause shall be to a clause in the Conditions. The headings of any clauses in these Conditions shall not affect their interpretation or interpretation.
- 1.4 Any reference to any statute or statutory provision shall incorporate a reference to any replacement statute or statutory re-enactment from time to time and to any subordinate legislation made under that statute or statutory provisions as may affect the same.
- 1.5 Any phrase including the terms “include” or “in particular” or any similar expression shall be construed as illustrative and shall not limit the words preceding or following such terms.
- 1.6 Reference to writing or written includes emails.

## **2. Basis of Contract**

- 2.1 The Order constitutes an offer by Barratt to purchase Goods and/or Services from the Supplier in accordance with the Conditions save to the extent that the Order specifically amends any of the Conditions.
- 2.2 The Order shall be deemed to be accepted and the Contract formed on the earlier of:
  - 2.2.1 The Supplier issuing written acceptance of the Order (provided that any written acceptance which seeks or purports to impose any Terms or Conditions which are not set out in either the Order or the Conditions shall not constitute for the purposes of forming a Contract, a written acceptance); or;
  - 2.2.2 The act by the Supplier consistent with fulfilling the Order including but not limited to commencement of delivery or supply of any of the Goods or Services.

And the Contract shall be formed at that date.

2.3 For the avoidance of doubt save as specifically provided for in the Conditions, they shall apply to the or any Contract to the exclusion to any other terms, either that the Supplier seeks to impose or incorporate or which would otherwise be implied by trade, custom, practice or any other course of dealing between the parties.

2.4 Save as specifically provided for in the Conditions, all of the Conditions shall apply to the supply of both and each of the Goods and Services.

### **3. Supply of Goods**

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 Upon delivery to Barratt correspond in all respects with any description of the same including any applicable Specification and any Drawings;

3.1.2 Be of satisfactory quality (as provided for by the Sale of Goods Act 1979 as amended from time to time) and fit for any purpose either held out or advertised by the Supplier or made known to the Supplier by Barratt either expressly or by implication by reason of Barratt's principal trade or business as a residential contractor and developer and for the purposes of this provision, Barratt relies upon the Supplier's professional skill and judgement;

3.1.3 Comply with all appropriate standards and regulations including but not limited to any of the same laid down by British Standards authority, Building Regulations, the NHBC and any other trade or appropriate body or organisation to which the Supplier belongs or which applies to the Goods;

3.1.4 If incorporating any wood or timber products then such wood or timber shall be from sustainable sources as certified by either PESC or FSC.

3.1.5 Where incorporating products for use in our house designs, these products shall be developed as BIM based objects within the BIM Store Library meeting the following objectives:

- Display uniformly regardless of content.
- Be a standard, complete, consistent, accurate and uniform representation of the components.
- Be compatible with recognised industry standards.
- Ensure the component is usable throughout the B.I.M. Process, from early conceptual design through to Facilities Management and operation of the Property or other building.

3.2 Be in such condition as shall be consistent with Barratt's obligations to its customers to the effect that the condition and quality of the Goods shall be warranted as being free from any defects in appearance (including but not limited to colour matching where appropriate) design, materials or workmanship for a period of 2 years from legal completion on the sale

of any Property, or if not incorporated into any Property from the date of delivery of the Goods or Services or Deliverables and warranted as being fit for the purposes for which they are supplied;

3.2.1 Comply with all application statutory and regulatory requirements relating to the manufacturer, enabling packaging, storage, handling and delivery of the Goods.

3.3 The Supplier shall ensure that it has at delivery and it will maintain any and all necessary licences, permissions, authorisations, consents and permits including but not limited to licences for the purposes of utilisation of any Intellectual Property Rights belonging to a third party that are needed in order to fulfil its obligations under the Contract in respect of the Goods.

3.4 The Supplier shall provide Barratt with a reasonable opportunity to inspect and carry out any tests upon or of the Goods in advance of delivery of the same but any such inspection or testing by Barratt shall not relieve the Supplier of any of its obligations hereunder.

3.5 In the event that a sample of the Goods has been provided to Barratt then such sample shall be deemed to form part of the description of the Goods and without prejudice to any of the other obligations to the Supplier under the Conditions all of the Goods shall be the same as, or similar in all material respects to, such sample.

3.6 In the event that at any time upon any inspection or testing of the Goods or any sample thereof, Barratt reasonably determines that the same does not meet each and all of the Supplier's obligations under the terms of the Contract then, upon notification by Barratt, the Supplier shall immediately take such steps to carry out such remedial action, including but not limited to changing or amending any conditions of manufacture or incorporating any new or different materials, in order to ensure compliance. Notification by Barratt pursuant to this sub-clause shall constitute notification by Barratt in respect of all Goods the subject of any Contract between the Supplier and Barratt. Following any such remedial action by the Supplier, Barratt shall have the right to conduct such further inspections or tests of the Goods or a sample of the same as it may reasonably decide but, whether or not such further inspection or test is carried out, the Supplier shall in any event remain fully and completely responsible for ensuring the Goods comply with each of its obligations under the Contract which obligations shall not be reduced or otherwise affected by any inspection, testing or further inspection or testing or absence of such inspection or testing by or on behalf of Barratt.

#### **4. Delivery of Goods**

4.1 The Supplier shall ensure that:

4.1.1 The Goods are properly packed in such a manner to ensure the same are in the condition required by the Contract at the point of delivery to Barratt;

4.1.2 Each and every delivery of the Goods is accompanied by a delivery note showing the date and number of the Order, the type and quantity of the Goods including any code or reference number for the same, details of any storage or like requirements in respect of the Goods, and confirmation, if appropriate, of the outstanding balance of the Goods to be delivered pursuant to the Contract.

4.2 The Supplier shall deliver the Goods:

4.2.1 Subject to the terms of sub-clause 10.2 on a date specified in the Order or in the event of no such date being specified in the Order, then upon reasonable notice from Barratt of its requirement for delivery of the Goods.

4.2.2 To the address including but not limited to the Development Site or such other location as may be instructed by Barratt from time to time including but not limited to a Property in or part of any Development Site owned or operated by Barratt.

4.2.3 During Barratt's normal hours of business on a Business Day unless otherwise instructed by Barratt.

4.3 Delivery of the Goods shall be deemed completed upon completion of unloading the same by the Supplier unless otherwise agreed at the required delivery location and upon signature by a designated Barratt employee on the delivery note such designated Barratt employee being, where delivery is effected to a Development Site, the site manager or assistant site manager, and it shall be the responsibility of the Supplier to ensure delivery in compliance with the obligations set out in this clause as a pre-condition for Barratt being liable to pay for the Goods provided that any signature by or on behalf Barratt confirming delivery of Goods shall be without prejudice to any of the Suppliers obligations hereunder and shall not constitute acceptance or agreement by Barratt that the Goods delivered conform either to the standards required or Specification for the Goods or to the stated quantity on the delivery note.

4.4 Title to the Goods shall unless otherwise provided by the terms of the Order pass to Barratt on completion of delivery in accordance with this clause and the Goods and their condition shall be at the sole risk of the Supplier until completion of delivery in accordance with this clause whereupon the obligation to insure the Goods against loss or damage including theft shall pass to Barratt.

4.5 The Parties agree that the Supplier may use a third party to deliver the Goods but such use of a third party shall not relieve the Supplier of any of its obligations under the terms of this clause.

4.6 If provided for in any Contract that the Supplier is to deliver the Goods to a Distributor and payment for the Goods is to be made by such Distributor to the Supplier then the Supplier shall ensure that the Conditions are incorporated into any contract between it and the Distributor to the exclusion of any term which is inconsistent with the Conditions, save in respect of any payment obligation on the Distributor.

4.7 Barratt may specify that the Goods shall be delivered and/or paid for by a third party contractor who is required to fit the same at a Site in which event.

The Supplier shall ensure that the Conditions are incorporated into any contract between it and such third party Contractor save in respect of any payment obligation on the third party Contractor.

## **5. Supply of Services**

- 5.1 The Supplier shall provide the Services set out in the Order in accordance with the terms of the Contract.
- 5.2 Where and to the extent the Services are to be provided in respect of or in relation to the Goods including but not limited to any design, construction, fitting, or otherwise to incorporate the Goods into or at a Property under construction at a Development Site then the Supplier shall provide these Services:
- 5.2.1 With all reasonable skill care and diligence and in accordance with best practice in the Supplier's industry, trade or profession.
- 5.2.2 Using personnel who are suitably skilled and experienced in performing these Services and with sufficient expertise and in sufficient numbers to ensure provision of these Services in accordance with the Contract.
- 5.2.3 To a standard comparable with and sufficient to ensure that the Goods shall, following completion of these Services, meet the requirements of the Contract in respect of the same.
- 5.2.4 To ensure the Goods fully conform with any descriptions or specifications including but not limited to the Specification which forms part of the Contract.
- 5.2.5 In accordance with the Brief (if applicable).
- 5.2.6 With or by the use of any and all equipment, tools, vehicles and any other plant or item as is required by best practice to provide the Services.
- 5.2.7 Using best quality goods, materials, standards and techniques and ensuring that no damage is caused to either any of the Goods or any other fixture or fitting or other item in the Property in which the Services are being carried out and so as to ensure the Goods continue to meet all of the standards to which the same are to be provided in accordance with the Contract and so as not to cause or permit as a result of these Services being carried out, any other part of the property to fail to meet the standards equivalent to those in respect of the Goods.
- 5.2.8 Strictly in accordance with any and all relevant or necessary licences or consents including but not limited to any planning consent in respect of any Property within which these Services are to be provided or any regulation or order or detail made under any such consent and in accordance with any and all other applicable laws and regulations.
- 5.2.9 Strictly in accordance with any and all health and safety rules and regulations or security requirements and in particular the health and safety requirements set down for working on Development Sites and where the public may have access as exhibited on the Barratt Website from time to time.
- 5.2.10 Not in a manner which causes or permits by reason of the carrying out of the Services any breach by Barratt of any licence, authority, consent or permission including but not limited to any planning consent or rule or regulation or detail made under or to the same or in a manner which does not comply with any policy



operated by Barratt as communicated to the Supplier whether via the Barratt Website from time to time or otherwise.

- 5.2.11 Where provision of the Services involves use of any materials, equipment, tools, drawings, specifications or data or any Intellectual Property Rights owned by or supplied or licenced by Barratt to the Supplier then the Supplier shall be responsible for the maintenance of the same in good condition and or ensuring that no breach of any of the same is committed (as appropriate) or caused and not to dispose or damage or permit the disposal or damage of any of the same and to use only in accordance with instructions or guidance provided by Barratt whether in writing or otherwise.
- 5.2.12 Where provision of Services involves use of any intellectual or property or similar rights in respect of which Barratt has a licence which permits the granting of sub-licences to the Supplier or others then the Supplier shall ensure that its provision of Services does not cause any breach or infringement of any of the terms of the licence which Barratt has in respect of the same.
- 5.2.13 Where others including but not limited to Barratt or any other Supplier or Contractor authorised by Barratt is working or providing Services within the Property or the Development Site in or at which the Supplier is providing the Services then the Supplier shall supply the Services in such a way as to facilitate the carrying out of work or provision of any Services by such other party and shall provide all reasonable cooperation and assistance within the scope of the Services to such other parties in connection with the provision of their work or other Services and the Supplier recognises that the Services may be required to be provided, so as to allow the carrying out of such work or provision of such Services by others under the terms of the Contract without any addition to the Price and shall cooperate with Barratt and all others employed or engaged by Barratt and shall otherwise comply with any and all reasonable instructions given by Barratt in relation to the provision of Services and/or their timing.

5.3 Where the Services are to be provided by the Supplier other than in relation to Goods which are to be delivered to a Development Site or for incorporation in a Development Site or a Property and relate to the provision of a Deliverable then such Services shall be provided and shall include any Services required so that they are provided:

- 5.3.1 In accordance with and subject to the duties and obligations in respect of the provision of the Services pursuant to sub sub-clauses 5.2.7, 5.2.8, 5.2.10, 5.2.11 and 5.2.12 hereof to the extent that the same apply to the production and delivery of the Deliverables on the basis that the word Deliverable is substituted for the word Goods within such sub sub-clauses.
- 5.3.2 Without prejudice to the provisions of the foregoing sub sub-clause to ensure that any Deliverable meets the requirements of the Brief set out in the Order and to ensure that all Intellectual Property Rights in the Deliverables vest in Barratt or, if and to the extent they do not vest in Barratt, then Barratt shall have a royalty free, non-exclusive licence to use the Deliverables for any purpose and in any media.

- 5.3.3 So as to maintain, through the further provision of such or further Services, the Deliverables updating, reviewing and revising the same from time to time in order to meet the requirements of the Brief.
- 5.3.4 So that use of the Deliverables in the normal course of Barratt's business or for the purposes of the same and to the extent that in such use by Barratt that Barratt exercise reasonable skill, care and diligence, shall not allow or to a material extent cause Barratt to be in, or commit a, breach of any law or regulation in effect at the later of provision of the Services or any of them or delivery of the Deliverable.

## **6. Price and Payment**

- 6.1 The Price for the Goods shall be the Price set out in the Order or that calculated in accordance with the Price List.
- 6.2 The Price for the Services shall be the Price set down in the Order as the total sum payable for these Services or shall be calculated at the rates for the provision of the Services as set out in the Order provided that the Supplier shall use all reasonable endeavours having due regard to the obligations under the terms of the Contract in respect of the provision of the Services to use the most cost effective means of supply including but not limited to use of individual employees or Contractors in the supply of the Services from time to time.
- 6.3 The Price of the Deliverables shall be the total cost of the provision of these Services required to provide or deliver the Deliverables in accordance with the terms of the Contract and no monies shall be payable in addition to the Price for the Services.
- 6.4 The Price shall be inclusive of any and all of the costs of packaging, delivery in accordance with the Order, provision of any insurance required under the Contract, payment of any tariffs due or payable in respect of the delivery of the Goods, the Services or the Deliverables and the removal and effective disposal of any packaging but excluding VAT. No extra or additional charges or payments shall be effective or payable for or in respect of the Goods, the Services or the Deliverables to the Price save for any specific disbursements as set out within the Order which shall be payable as provided for therein.
- 6.5 Save as expressly set out in the Order payment for the Goods and/or the Services and/or the Deliverables (where appropriate) shall be due on invoice from the Supplier addressed to Barratt, or as required by the terms of the Order, tendered on completion of delivery of the same strictly in accordance with the Contract with.

In the case of:

### **6.5.1 The Goods**

A delivery note signed by or on behalf of Barratt in accordance with the Contract confirming delivery of the same.

; and;

### **6.5.2 The Services**

Upon signed confirmation of provision of the same including where the same relate to the provision of a Deliverable, upon receipt of the same on the appropriate form or media for the Deliverable, by or on behalf of Barratt.

- 6.5.3 Provided that signature by or on behalf of Barratt on the delivery note or confirmation of provision shall not constitute acceptance by Barratt that the Goods and/or the Services and/or the Deliverables have been delivered in accordance with and to the standards required by the Contract nor otherwise constitute a waiver of any rights of Barratt or obligations of the Supplier in relation to any of the same.
- 6.6 Payment of the invoice from the Supplier shall be made within 30 days of the end of the month of receipt unless otherwise provided within the Order or as provided for in sub-clause 6.7 hereof.
- 6.7 Notwithstanding the foregoing sub-clauses of this clause in the event that the Contract is deemed to be a Construction Contract for the purposes of the Housing Grants, Construction and Regeneration Act (1996) as amended from time to time then the Supplier may apply for payment of the Goods and Services by application (“Application”) made on the last working day of each calendar month.
- 6.7.1 The application shall specify:
- All of the Goods and the Services provided under the Contract
  - Details of each of the same applied for since the date of the previous application
  - The unit price and/or rate for the provision of each of the same in accordance with the Order
  - It shall not include any Goods which have not been delivered in accordance with the Contract or where the Supplier is to provide Services to fit the same into any of the Properties or at any of the Development Sites owned or operated by Barratt, which have not been so fitted or installed in accordance with the Contract.
- 6.7.2 Barratt may in respect of each Application serve a payment notice (“Payment Notice”) incorporating the Application and specifying those Goods and those Services covered by such Application which it does not consider have been delivered or provided in accordance with the Contract and should not therefore have been incorporated within the Application within 15 business days of the later of the date of the Application or the date of receipt of the Application.
- 6.7.3 On a date (“Final Date for Payment”) a further 10 business days after the later of the date of the Payment Notice or the last date upon which the Payment Notice could be served if no Payment Notice is given, the Supplier shall be due the sum set out in the Payment Notice or if no notice is given the sum set out in the Application (“Notified Sum”).

- 6.7.4 In the event that Barratt considers that an amount less the Notified Sum is to be paid then not less than 2 business days prior to the Final Date for Payment Barratt may issue a pay less notice ("Pay Less Notice") setting out what Barratt intends to pay and the basis upon which such payment is to be made which Pay Less Notice may incorporate the Supplier's Application and state the deductions to be made from the same together with the reasons for such deductions.
- 6.7.5 Any dispute in respect of a Contract which constitutes a Construction Contract shall be determined in accordance with the Scheme (as herein after defined).
- 6.7.6 "The Adjudicator" in the Contract means such person as Barratt and the Supplier choose by mutual agreement or such other person as may be appointed from time to time by the President or the Vice President of the Royal Institution of Chartered Surveyors.

Any dispute or difference arising under or in connection with the Contract may be referred to adjudication in accordance with the Scheme for Construction Contracts SI 1998 No 649, as amended ("Scheme") except that:

- The Responding Party to any adjudication shall have a minimum of 14 days from receipt of the Referral Notice to respond to the Referral Notice;
- The parties agree that the Adjudicator shall have jurisdiction to consider and determine any matter raised by Barratt in its response to a Referral Notice served by the Supplier, including but not limited to, any counterclaims, set offs or abatements which Barratt might raise in its response, notwithstanding the fact that Barratt may have failed to serve a notice of intention to pay less pursuant to section 111 of the Housing Grants, Construction and Regeneration Act 1996 as amended ("Act") and/or a Pay Less Notice pursuant to sub-sub clause 6.7.4 of the Condition;
- The Adjudicator shall also have jurisdiction, and shall be deemed required to or by any Referral Notice issued by the Supplier, to make an award in relation to matters raised by Barratt in its response to such Referral Notice and that any such award shall be set off against any award made in favour of the Supplier pursuant to its Referral Notice.
- The Referring Party in any Adjudication proceedings may not rely upon any report or statement or opinion which has not been previously seen by the other party and which the other party has not had a reasonable opportunity to consider, prior to the Adjudication. If, notwithstanding this, the Referring Party submits to the Adjudicator such a document the Adjudicator shall have no jurisdiction to take its contents into account on reaching its decision. This clause shall take preference over clause 17 of the Scheme;
- The Adjudicator shall be required to give detailed reasons in support of his decision, including stating expressly what evidence he has relied upon and what evidence he has discounted and why, in making his decision. The Adjudicator shall apply the usual rules of evidence for civil proceedings;

- The Adjudicator may correct any clerical or typographical errors in their decision within 5 days of it being made.
- The time for the Adjudicator's decision shall be 42 days not 28 days from referral;

Provided always that if any provision of this clause 6 is or becomes to any extent invalid or unenforceable under any applicable law (including a failure to comply with the requirements of the Act), then such provision shall be severed and the remainder of the provisions of clause 6 shall continue in full force and effect.

The Adjudicator's decision is binding until the dispute or difference is finally determined by legal proceedings as provided in sub clause 15.7.

6.8 Without prejudice to any other right under the Contract Barratt shall have a right on reasonable notice to audit any and all records of the Supplier relating to the Contract in order to confirm or establish that the Supplier is complying with its obligations under the Contract.

6.9 In the event that either party fails to make payment of a sum due to the other under the Contract by the due date for payment of an invoice or Final Date for Payment in the event of the Contract being a Construction Contract then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum over and above the base rate of Barclays Bank PLC from time to time. Such interest will accrue on a monthly basis from the due date until the date of actual payment of the amount due whether before or after judgement and shall be added to the amount of the overdue amount save that where any amount otherwise due from Barratt is disputed by Barratt acting reasonably and in good faith as being payable on the basis that it has not been reasonably established that either the Goods or Deliverables have been delivered or Services have been provided then until provision by the Supplier of such reasonable evidence to establish delivery and/or provision respectively, no interest shall be payable on any outstanding amount.

## **7. Insurance**

7.1 The Supplier shall maintain public liability and employers liability insurance in respect of the provision of the Goods or Deliverables and the carrying out of the Services and in respect of any and all of its employees in an amount of not less than £10,000,000 unless otherwise set out in the Order.

7.2 The Supplier shall maintain in force professional indemnity insurance in respect of the Services and their provision in a sum of not less than £5,000,000 on an each and every claim basis and shall maintain in respect of the Goods and/or the Deliverables, product liability insurance in the sum of not less than £5,000,000 provided that the Order may specify which or whether both or either such insurance policies are required for purposes of the Contract.

7.3 Each of the insurance policies required to be maintained under the foregoing sub-clauses of this clause shall be maintained throughout the Contract and for a period of not less than 12 years from completion of each and every obligation of the Supplier under the Contract

in respect of the Goods and/or the Services and/or the Deliverables, shall contain no unusual exclusions or limitations by reference to the terms which would normally be available to a company carrying out the trade or business of the Supplier and the Supplier shall throughout such period not less than once in each calendar year confirm to Barratt that each such insurance policy is being maintained and to provide reasonable evidence, by way of brokers confirmation or otherwise, that the premiums for the same are being paid and such insurance remains in full force and effect.

## **8. Intellectual Property Rights**

- 8.1 The Supplier shall procure that any and all Intellectual Property Rights relating to the Goods vest in Barratt or that Barratt has an irrevocable royalty free licence (“The Licence”) to use the same for any purpose and to grant sub-licences and that in any event the Supplier warrants that it has full clear and unencumbered title to all such rights for the purposes of vesting the same in Barratt or that it has full clear and unencumbered right to procure that the same vest in Barratt or to procure the grant of the Licence at the date the first delivery of the Goods and for the full period of the Contract.
- 8.2 The Supplier shall assign to Barratt with full title guarantee and free from any third party rights all Intellectual Property Rights which it owns in respect of any product or item produced by the Services including but not limited to any of the Deliverables.
- 8.3 If and to the extent in connection with the provision of the Services the Supplier uses any program, software or any other item the Intellectual Property Rights to or in which are owned by a third party then the Supplier shall procure and at the date of the Contract warrants that it can procure a royalty free non-exclusive sub-licence in favour of Barratt with provision for Barratt to grant sub sub-licences to a third party using the Deliverables or operating the same under any agreement with Barratt allowing Barratt or its sub sub-licencees to use the program or such item in any way it may reasonably require from time to time without limit in terms of time period.
- 8.4 The Supplier shall obtain and warrant at the date of the Contract that it can obtain, or has already obtained, where it has, a waiver of any and all moral rights in any part of the Deliverables or within any product produced by the Services to which any individual whether employed by the Supplier or not is now or maybe at any time in the future entitled under Chapter 4, Part 1 of the Copyright Designs & Patents Act 1988 or any similar provisions in any jurisdiction in which such moral rights may arise.
- 8.5 The Supplier shall at Barratt’s request do or procure to be done any further acts or things and execute or procure execution of any documents as may be required to evidence or secure to Barratt the full benefit either of the Intellectual Property Rights in any Deliverable or the Goods or in respect of the Services or any licence or sub-licence in respect of the Intellectual Property Rights belonging to a third party to which Barratt is entitled to a licence or a sub-licence under the terms of this clause.

## 9. Remedies

9.1 Save where provided otherwise in the Order time shall be deemed to be of the essence for the purposes of delivery of the Goods, provision of the Services and/or production of the Deliverables.

9.2 In the event that the Goods and/or the Services and/or the Deliverables are not delivered or provided at the times and on the occasions required by the Contract or, notwithstanding delivery or provision purports to have been made at the times and on the dates required by the Contract, but the Goods and/or the Services and/or the Deliverables respectively do not comply with the provisions of Clauses 3 and 4 or 5 respectively or in the event of any breach by the Supplier of any of the terms of the Contract or any of them, then, without limitation to any of its other rights or remedies, Barratt shall have the right to exercise any one or more of the following remedies irrespective of whether or not it has accepted the Goods and/or the Services and/or the Deliverables:

9.2.1 To terminate the Contract.

9.2.2 To reject the Goods to the extent that the same either do not conform or have yet to be delivered and require the Supplier to pick up the Goods so rejected at the expense and risk of the Supplier and in the event that the Supplier fails so to do within a reasonable time not exceeding 5 days of being notified of such rejection by Barratt's, then Barratt's shall be at liberty to dispose of the same as they see fit.

9.2.3 To require the Supplier at its own cost to repair or replace the rejected Goods or to re provide the Services or to reproduce the Deliverable using its best endeavours but consistent with its obligations under the Contract to deliver, replace the Goods, re provide the Services or reproduce the Deliverable respectively as quickly as possible.

9.2.4 To allow Barratt to carry out by itself or others such work to the Goods, provide such services in relation to the Services and modify or amend the delivery at Barratt's complete discretion as it considers necessary or appropriate in order to render the same compliant with the requirements of the Contract and paying to Barratt the costs on a full indemnity basis to Barratt of carrying out such work and providing such services or modifying or amending the Deliverable and a figure equivalent to 5% of the value of the rejected Goods, Services or Deliverable for each day from the date the same were required to be delivered, provided or produced until the date the Goods, the Services or the Deliverable are in full compliance with the obligations in respect of the same set out in the Contract, save for those relating to time and delivery.

9.2.5 To recover on a full indemnity basis from the Supplier any costs incurred by Barratt in obtaining substitute or replacement Goods and/or having provided substitute or replacement or supplemental services to the Services and/or a Deliverable from an alternative source or third party.

9.2.6 To recover damages for any other cost, loss or expense incurred by Barratt on an indemnity basis which is attributable to the failure of the Supplier to meet its obligations under the Contract.

- 9.3 In the event that the Supplier provides replacement Goods, re provides the Services or reproduces the Deliverable then each of the conditions of the Contract shall apply to the same and the Supplier shall not be relieved of any of its obligations in relation to the Goods, the Services or the Deliverable by provision of a replacement or re-provision of any Services or reproduction of any Deliverable.
- 9.4 Without prejudice to, and in addition to the provisions of the foregoing sub-clauses of this clause the Supplier shall keep Barratt indemnified in full against and hold Barratt harmless from any and all costs, expenses, damages, losses (direct or indirect) including any interest penalties and legal or other professional fees and expenses incurred or payable or paid by Barratt including but not limited to the amount of any judgement award and costs arising from:
- 9.4.1 Any claim made against Barratt by a third party including but not limited to any customer of Barratt arising out of or in connection with the supply of the Goods and/or the Services and/or the Deliverable to the extent that such a claim arises out of the breach, negligent performance or failure or delay in performance of the Contract or incomplete or partial non-performance of the Contract by the Supplier; and;
- 9.4.2 Any claim made against Barratt by a third party for death, personal injury (including inconvenience or like injury) or any damage to property real or personal or tangible or intangible arising out of or in connection with any defect in or in any failure of the Goods or the Services or Deliverable to comply with the requirements of the Contract; and;
- 9.4.3 Any claim made against Barratt for in respect of any breach of any intellectual property right brought by a third party against Barratt by reason of Barratt's use of the Goods or Services or use or publication or dissemination in any media of the Deliverable.
- 9.4.4 The provisions of this sub-clause shall survive termination of the Contract.
- 9.5 The rights and remedies of Barratt as set out in these Conditions shall be in addition to any rights implied by or under statute, or are available to Barratt under common law.

## **10. Barratt's Obligations**

- 10.1 Barratt shall provide the Supplier with:
- 10.1.1 The Brief for the Services or the Deliverable and the specification for the Goods as referred to in the Order.
- 10.1.2 Such reasonable access during normal working hours at any Development Site or Property or premises owned or operated by Barratt to which the Goods are to be delivered and reasonable access to any operating system of Barratt necessary for the delivery of the Services and production or provision of any Deliverable and either/or both of the same for the purposes of the Supplier carrying out work to fit and/or install the Goods at any Property or Development or for the provision of replacement Goods and to provide further access to the operating systems of



Barratt to facilitate re provision of the Services or reproduction of the Deliverable without prejudice to any other Barratt obligation to the Supplier hereunder.

- 10.2 Barratt may at any time alter or amend the Specification or the Brief or the timing or order of delivery of any of the Goods, provision of any of the Services, or production of the Deliverable provided that:
- 10.2.1 Subject to the terms of sub sub-clause 2 of the sub-clause and of sub-clause 3 of this clause to the extent that such alteration requires the Supplier to carry out additional works provide additional Services or modify any Goods or Deliverables in the course of manufacture or production (“a Change”) then the Supplier shall notify Barratt in advance of carrying out the same of any Change in the Price consequent on search alteration and change in the date for delivery of the Goods, Services or Deliverables following which notification Barratt shall either confirm the Change to the Brief or the Specification or withdraw the Change and if confirmed shall pay such Change in the Price and accept such Change in the date for delivery.
- 10.2.2 In the event of any change in the date by which the Goods are to be delivered, Services provided or Deliverables produced which brings forward such date then the same shall constitute a Change and the procedure for changing the Brief or Specification requested by Barratt as set out in sub sub-clause 2 of this clause shall be followed. In the event that Barratt requests a delay in delivery of the Goods or provision of the Services or production of the Deliverable then the Supplier shall comply with such change at no cost to Barratt save where such delay exceeds 3 months in which event following the end of such 3 month period Barratt shall have the option of immediately accepting delivery of the Goods provision of the Services or production of the Deliverable or meeting reasonable costs incurred by the Supplier in consequence of such delay.
- 10.3 For the avoidance of doubt any alteration in the Specification or the Brief necessary or appropriate by reason of any breach by the Supplier of any of its obligations under the Contract shall not constitute a Change and shall not be subject to the provisions of sub-sub clause 2 of this sub clause but shall be accommodated by the Supplier at no cost to Barratt and, in any event, the Supplier shall constantly use all reasonable endeavours to minimise any additional costs payable by Barratt as a result of any Change in the Brief, Specification or delivery date or date of provision.
- 10.4 Barratt may alter the quantity of the Goods under the Contract and where such quantity is increased, such increased quantity shall be provided by the Supplier on the same terms as to the Price as apply in respect of the original quantity of the Goods set out in the Order and Barratt may reduce the quantity of the Goods set out in the Order at any time provided that the Supplier has not commenced manufacture of the same or ordered materials for incorporation in the same which the Supplier, acting reasonably, cannot utilise in respect of any other product.
- 10.5 Barratt may terminate the provision of the Services at any time on not less than 5 business days notice to the Supplier and following termination shall have no liability for or in relation to the balance of Services not then provided and the Price shall be reduced proportionately to the extent that the Services have been provided at the date of termination provided that Barratt shall be entitled to the benefit including but not limited to any installation of any of

the Goods or production of any part of a Deliverable completed by the Supplier at the date of termination.

- 10.6 Save as specifically provided in this clause Barratt shall have no liability to the Supplier whether for loss of profits or additional costs or any other cost or disbursement in the event of any change to the Brief or Specification or delivery or provision date or any change to the quantity of the Goods or early termination of the provision of the Services and/or production of the Deliverable under the Contract with the Supplier.

## **11. Compliance with Barratt Policies**

### **11.1 Competition, Anti-Bribery and Anti-Slavery.**

11.1.1 The Supplier shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery, anti-slavery and competition (including but not limited to the Bribery Act 2010, Competition Act 1998, Enterprise Act 2002 and Modern Slavery Act 2015) in relation to its business activity and in particular in respect of the manufacturing or supply of any of its products or the carrying out of any Works in the course of its business including but not limited to the supply of the Materials and Goods incorporated in the Contract. The Supplier warrants and undertakes to Barratt on its behalf and on behalf of each of its Employees or representatives that they shall comply, and confirms that it has used its best endeavours to ensure that any sub-contractor or party within its supply chain complies with Barratt's Anti-Bribery and Competition Policies and with the Barratt Contractor Code of Conduct each as constituted and made available to the Supplier from time to time.

11.1.2 Without limitation to the terms of sub-clause 11.1.1, that no forced or underage labour shall be or has been used, that it has maintained working conditions which are safe and hygienic and that it has not practiced any discrimination against or in relation to its workers who have complete freedom of association and that all applicable health and safety regulations at any of the facilities which it occupies or controls or any site at which it carries out work have been implemented and that in respect of the same these comply with all applicable local labour legislation from time to time.

11.1.3 The Supplier confirms that in the event of it receiving notice of any breach by it or others of any of the above then it shall immediately report the same to the Company and/or, if appropriate, [Barratt@safecall.co.uk](mailto:Barratt@safecall.co.uk) and shall fully cooperate and comply with any reasonable requests made by Barratt for assistance in any enquiry or action in relation to any such breach whether notified by the Supplier or not. The Supplier shall cooperate with any reasonable request made by Barratt for an audit of the Suppliers' compliance and inspection of its premises in relation to compliance by the Supplier with the terms of this clause.

11.1.4 The Supplier shall also comply with and be subject to the Customer Charter and Code of Conduct as issued by Barratt from time to time and notified to the Supplier in relation to any dealings it has with any Barratt Customer.

11.1.5 If the Supplier fails to comply with any of its obligations under the terms of this clause 11.1 then the Supplier shall be solely liable for any costs and/or damages arising from such non-compliance and without prejudice to that obligation shall also take all steps necessary or appropriate to rectify any such failure or all reasonable steps to procure that any such rectification by others for whom the Supplier is responsible under the terms of any Contract rectifies any such failure and in any such case without any adjustment to any Delivery Date or Price.

11.2 The Supplier warrants that at the date of any Contract and as a continuing warranty during the term of any Contract that no employee or director of Barratt or any Connected Person as defined in section 252 of the Companies Act 2006, to either, has been:

- In receipt of any payment whether in money or a payment in kind from the Supplier whether or not for any goods or services provided or supplied; or;
- Has any interest in the Supplier other than an interest in Ordinary Shares traded upon a recognised UK stock exchange, of the Supplier or any associated company thereof

And it is a condition of any Contract that such warranty is true and accurate in all respects. In the event of any breach of the terms of this clause Barratt may terminate the Contract with immediate effect and without notice to the Supplier or, at Barratt's option rescind any Contract in circumstances where any materials supplied by the Supplier can be returned to the Supplier in reasonable condition. Without prejudice to the provisions of this sub-clause the Supplier is under a continuing obligation throughout the term of any Contract to inform Barratt of any breach of the warranty set out in this clause of which the Supplier, its employees or directors becomes aware and the Supplier shall ensure that each of its employees involved in any Contract are specifically made aware of this term.

11.3 If at the date of any Contract an employee or director or any Connected Person of them has an interest in the Supplier or the Supplier's business so that the Supplier is unable to provide the warranty required by clause 11.2 hereof then the Supplier may declare such interest setting out full and complete details thereof addressed to the commercial director of the division of Barratt responsible for placing the Order with the Supplier who shall have the right but not the obligation to waive on behalf of Barratt the requirements of clause 11.2 hereof in respect of that specific interest and specific Contract but not further or otherwise.

11.4 The Supplier shall also comply with any other Barratt policies including but not limited to those in respect of Data Protection and trade specifications set out on the Barratt website which apply to the Goods or the Services or the Supplier's delivery or performance of the same.

11.5 Barratt shall have the right but not the obligation to audit compliance by the Supplier with the Barratt policies referred to above or any other policies or obligations of the Supplier hereunder and the Supplier shall provide reasonable access to Barratt to it.

## **12. Force Majeure**

In any Contract "Force Majeure" means any events or circumstances beyond the party's reasonable control which adversely affects the performance of their obligations. Such events and circumstances include:

- Explosions, fires, nuclear radiation contamination, natural disasters, acts of God;
- War, civil war, insurrection; and
- Labour strikes.

A Force Majeure event will not have occurred where such event arises out of any act or omission of the Supplier, its servants, suppliers, sub-contractors and/or agents. In the event that the Supplier is or will be delayed in performing any of its obligations under a Contract by Force Majeure, then it must first give notice in accordance with the provisions of sub clause 16.3. The Supplier shall not be entitled to any adjustment to the Contract Sum as a result of Force Majeure

### **13. Confidentiality**

Any drawing, detail, document or information prepared by or on behalf of Barratt or any confidential information of Barratt shall remain confidential and shall not be divulged to any third party or made use of by the Supplier (except for the purposes of performing the Suppliers' obligations hereunder). Further, all information and knowledge which the Supplier acquires relating to or arising out of or in connection with a Contract, the Goods or Services and the Site shall remain confidential. The Supplier shall not disclose or publicise any such matter without the consent of Barratt, except to the extent required by law and/or for the purposes of execution and completion of the Contract. In respect of any disclosure to a third party permitted under a Contract the Supplier shall ensure that the third party is subject to confidentiality provisions in respect of the documents or information disclosed no less strict than those set out in this clause. This clause shall not apply to any information which is in or enters the Public Domain other than as a result of a breach of any Contract or which the Supplier can establish was in the possession of the Supplier prior to receipt of information relating to the Goods or Services or was independently developed by the Supplier.

### **14. Data Protection**

14.1 The Supplier may be provided with Personal Data in the course, or for the purposes, of its supply of the Goods, the Services and provision of the Deliverables, for the purposes of the Personal Data Barratt shall be the Data Controller. Such Personal Data may relate to employees of Barratt or any affiliate or any third party or any Barratt Customers ("Data Subject"). The Supplier shall only use or process any such Personal Data for the express purposes for which the same shall be provided which shall be:

14.1.1 If provided in connection with the supply of the Goods to a Property then only for purposes of contacting any Barratt Customer who owns the or a Property from time to time within which the Goods are to be fitted and or to which the same are to be delivered in connection with the Goods; and/or;

14.1.2 If provided in connection with the provision of the Services then where the Services are provided in connection with the delivery or installation or repair or replacement or otherwise of the Goods then only for the same purposes as set out herein in connection with the Goods; and/or;

- 14.1.3 If the Services are to be supplied in order to provide a Deliverable then solely for the purposes of delivering that Deliverable in accordance with the Contract; and/or;
  - 14.1.4 If for the provision of Services in connection with a Deliverable or otherwise for an express specific purpose then solely for or in relation to use for that Deliverable or for that express specific purpose; and/or;
  - 14.1.5 If such Personal Data relates to employees of Barratt or affiliates or any third party then solely for the declared purpose required by Barratt and such Personal Data shall be processed only in accordance with the express instructions of Barratt or such Affiliate or third party; and;
  - 14.1.6 Any Personal Data shall be processed, used, distributed and stored in any event strictly in accordance with the Data Protection Act and any data protection principles published by the Information Commissioners Office or any restatement or update or amendment thereto published from time to time and only for the period and purpose required by the terms of the Contract.
- 14.2 For the purposes of any Contract unless specifically agreed otherwise Barratt shall be the Data Controller and the Supplier shall be the Data Processor each as defined in The Data Protection Act.
- 14.3 Barratt shall as Data Controller be responsible for obtaining the consent (if required) of the person to whom the Personal Data relates to its use by the Supplier as provided for in this clause and shall notify the Supplier of any relevant period for which the consent of such person has been obtained or for which the Personal Data may be retained by the Supplier. The Supplier shall be responsible for ensuring that any Personal Data is destroyed, permanently deleted or, if not possible by reason of any legislative obligation notified to Barratt, secured and not used for any other purpose promptly upon expiry of such consent or expiry of any notified period or otherwise earlier termination of the same where such earlier termination is notified to it by Barratt, or in any event upon termination of the agreement with the Supplier under which the same was provided.
- 14.4 Barratt confirms that save where specifically notified to the Supplier no Sensitive Personal Data (as defined in the Data Protection Act) is to be provided to the Supplier in connection with any Contract and in the event of the Supplier receiving any Sensitive Personal Data or Personal Data which it considers to be sensitive then the Supplier shall promptly notify Barratt of the same and shall, following such notification, take all immediate steps to delete the same from any of its records and confirm such deletion to Barratt.
- 14.5 The Supplier shall, in any event, keep any and all Personal Data which is provided to it or which comes into its possession strictly private and confidential and shall not transfer or provide the same to any employee of it not required to receive the same for the purposes of the Contract or to any third party save with Barratt's prior consent for a specified purpose and shall in any event be responsible for the use and security in processing of any such Personal Data provided to a third party by it and shall ensure it is not provided to or shared with any third party outside the European Economic Area.
- 14.6 The Supplier shall ensure that any of its employees, servants or agents who may have access to any Personal Data are under strict obligations of confidentiality which require them to keep confidential any Personal Data.

- 14.7 The Supplier shall in connection with the use or processing of any Personal Data adhere to the provisions of the Data Protection Policy operated by Barratt as published on the Barratt Website from time to time.
- 14.8 In the event that the Supplier receives any request from a Data Subject relating to any Personal Data it has then it shall immediately notify Barratt and shall not provide any Personal Data to the Data Subject without Barratt's express prior written consent.
- 14.9 The Supplier shall permit Barratt to carry out an audit of the arrangements it, or any third party to whom it proposes to transfer Personal Data in accordance with the terms of this clause, has in place to keep any Personal Data secure and to comply with any reasonable requests for changes to the arrangements made by Barratt to ensure the same is processed only in accordance with this clause.
- 14.10 In the event of any conflict between any obligation imposed by law, any obligation imposed by the Data Protection Policy operated by Barratt from time to time and any instructed purpose or use of any Personal Data then that order shall be the order of precedence in relation to and for the purposes of compliance by the Supplier under and with the terms of any Contract.
- 14.11 In the event of any data breach including but not limited to the loss or unauthorised provision of any Personal Data by the Supplier or any Contractor or any third party to whom the Personal Data was provided or released by the Supplier whether or not authorised by Barratt then the Supplier shall immediately inform and in any event within 36 hours the Barratt Representative or, at the Barratt Representative's option, the Data Protection Manager designated in accordance with its Data Protection Policy by Barratt from time to time of such breach or unauthorised release and shall provide full and complete details of such loss or such unauthorised release or breach together with the steps to be taken in order to recover or otherwise minimise the effect of such breach or loss or unauthorised disclosure and the full and precise extent of the Personal Data the subject of such breach, loss or unauthorised disclosure and shall ensure that the designated contact for Barratt receives updated information in respect of the same at all times and shall also report any such breach, loss or unauthorised disclosure to the Information Commissioner's Office, as well as report to Barratt and shall otherwise fulfil each of its obligations in accordance with the data principles under the Data Protection Act.
- 14.12 Any breach of this clause by the Supplier shall be deemed to be a breach of clause 9.2 hereof and the Supplier shall be liable to Barratt as provided in that.

## **15. Suppliers Personnel**

- 15.1 The Supplier warrants and represents to Barratt that the Supplier is, and shall remain throughout the Term of any Contract, responsible for all individuals who may work for the Supplier in providing the Services, and the Supplier shall be solely responsible for the remuneration, insurance and other obligations in respect of all these individuals. With effect from the date of any individual's engagement in the provision of the Services, the Supplier shall be in compliance with all applicable legislation, including any social security rules and regulations. If Barratt is deemed liable for any taxes, social security charges or payments for pensions or for any other payments or claims or demands whatsoever relating to individuals working for the Supplier and providing the Services, the Supplier will fully

indemnify and hold Barratt harmless (on an after-tax basis) in respect of any and all of these claims and demands.

- 15.2 It is the parties' intention that neither the commencement nor the termination of any of the Services will give rise to a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ("TUPE Regulations").
- 15.3 The Supplier shall fully indemnify and hold harmless Barratt and any person that provides services in replacement of any of the Services ("Successor Supplier") from and against all employment claims incurred, suffered or paid by Barratt or Successor Supplier in relation to any employment rights or contract of employment (or termination thereof) of any employee or former employee of the Supplier or a Subcontractor that is claimed or deemed to have effect as between:
- 15.3.1 Barratt or any Successor Supplier; and
- 15.3.2 that individual ("Transferred Employee"), under the TUPE Regulations and relates to a matter or incident arising whilst that Transferred Employee was employed or their employer was engaged by the Agency before the date of transfer ("Transfer Date") to Barratt or any Successor Supplier.
- 15.4 To the extent that TUPE applies (or may apply) as a result of the responsibility for providing the Services under this agreement transfers from the Supplier to a Successor Supplier or to Barratt itself. Barratt shall take all reasonable steps to procure that the Successor Supplier or Barratt respectively shall hold the Supplier harmless and indemnify the Supplier against all direct losses, costs, damages, liabilities, proceedings, damages, compensation, tribunal awards, fines, claims, demands and expenses the Supplier incurs on account of or arising from:
- 15.4.1 Any claim by a Transferring Employee of any fact or matter to the extent that such claim concerns or arises from an act or omission in relation to the employment or termination of employment by Barratt or a Successor Supplier respectively after the Transfer Date;
- 15.4.2 Any claim arising from Barratt or Successor Supplier's failure to comply with its obligations under regulations 13 and 14 of TUPE (information and consultation) save to the extent that losses arise or are increased by reason of the Supplier's failure to comply with those regulations;
- 15.4.3 Any claim arising as a result of a proposed or actual repudiatory breach of the contract of employment of a Transferring Employee by Barratt or Successor Supplier, pursuant to Regulation 4 (11) of TUPE;
- 15.4.4 Any claim arising as a result of a proposed or actual change by Barratt or Successor Supplier to any Transferring Employee's working conditions, terms of conditions of employment or any proposed measures of Barratt or Successor Supplier which is or are alleged to be to any of the Transferring Employee's material detriment.

Provided that Barratt's obligations to the Supplier shall be limited to an obligation to make reasonable endeavours to indemnify in the event of a transfer to Barratt and to procure that the Successor Supplier does so in the event of a transfer to the Successor Supplier.

- 15.5 The Supplier shall, if requested to do so by BDW at any time during the period of three months before the termination of a Contract or of a Framework Agreement if applicable or cessation by the Supplier of provision of any of the Services ("Rundown Period"), use all reasonable endeavours to redeploy all employees of the Supplier and/or any Subcontractor then engaged in providing the Services (or any of those employees as Barratt may specify) before the end of the Rundown Period to mitigate the number of those employees affected by any relevant transfer under the TUPE Regulations that may occur on the cessation of any of the Services.

## **16. General**

### **16.1 Entire Agreement**

16.1.1 The Contract consisting of the Order including all documents included or referred to therein constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

16.1.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.

16.1.3 Nothing in this clause shall limit or exclude any liability for fraud.

### **16.2 Non assignment**

The Supplier shall not assign any Contract nor any rights under the same including but not limited to any right to payment.

### **16.3 Notices**

16.3.1 All statements, notices, comments, instructions, consents, applications, orders or approvals to be given or served hereunder in writing shall be delivered personally or sent by post or email and, in the case of personal delivery or delivery by post, to the address for the Company or Supplier (as the case requires) stated in the Order and, in the case of transmission by email to the addressee nominated in the Order and shall be deemed to be served as follows:

- If personally delivered, at the time of delivery;
- If given or made by pre-paid first class post 48 hours after being posted (excluding Saturdays, Sundays and Bank Holidays); and
- If given or made by email at the time of transmission (subject to the production of a sent report showing that the same has been sent).



16.3.2 Where in the case of delivery by hand or by email under clause 16.3.1 such delivery occurs either after 6.00pm on a working day or on a day other than a working day service shall be deemed to occur at 10.00am on the next following working day.

16.3.3 In proving service under this clause 17.3 it shall be sufficient to prove that personal delivery was made, or that the applicable means of postage and email was properly addressed and dispatched, as the case may be.

#### 16.4 Severance and Non Waiver

16.4.1 If one or more of the provisions of the Contract are or become to any extent invalid or unenforceable under any applicable law, then the remainder of the Contract shall continue in full force and effect.

16.4.2 The allowance of time or any other indulgence or non-enforcement by Barratt in respect of its rights or any matter will not affect or prejudice or be taken as a waiver of the rights of the Barratt.

#### 16.5 Third Party Rights

All third party rights are excluded and no third party shall have the right to enforce the terms of the Contract.

#### 16.6 No Agency

Nothing in the Contract shall create any agency or partnership between the parties.

#### 16.7 Governing law

Any Contract made incorporating the Conditions shall be governed by and construed in accordance with the laws of England and Wales and save as provided in sub clause 7.7 the parties shall submit any dispute to the Courts of England and Wales.

#### 16.8 Limitation

Section 5 of the Limitation Act 1980 is expressly excluded. Barratt and the Supplier agree that they will not rely upon a defence pleading Section 5 of the Limitation Act 1980 (including any amendment, extension or re-enactment) in any proceedings commenced under a Contract. Notwithstanding the provisions of the Limitation Act 1980, no proceedings shall be commenced under a Contract after the expiry of 12 years from delivery or provision of the last item comprised in the Goods or the Services by the Supplier.